88-1967

Supreme Court, U.S.
FILED
DEC 19 1988
JOSEPH F. SPANIOL, JR.
CLERK

CASE NO. _____

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1988

CHARLES M. ANDERSON,

Petitioner

VS.

CHARLES W. SICKELS, THOMAS J. MIDDLETON, BERNARD F. JENNINGS, A. STRODE BRENT, JR., PARR EXCELLANCE, INC., HENRY C. MACKALL, WALKER & SILVER, DONALD L. BOWMAN, BOWMAN LAW OFFICE, F. BRUCE BACH, JACK B. STEVENS, J. HOWE BROWN, THOMAS A. FORTKORT, CLAUDE HILTON,

Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS TO THE FOURTH CIRCUIT

CHARLES M. ANDERSON
8401 Cathedral Forest Dr.
Fairfax Station, Virginia 22039
Appellant Pro Se

QUESTIONS PRESENTED FOR REVIEW

I

Are judges immune from injunctive relief request.

II

Did plaintiff request of the trial court that they "review the decisions of state courts" in his request for injuntive relief.

III

Does plaintiff have a right to amend if the trial court determines that he failed to state a claim for which he is entitled to relief.

IV

Did plaintiff "fail to establish" that non-state-actor defendants conspired with a state official.

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OPINIONS BELOW

The judgment and opinion of the U.S. Court of Appeals for the Fourth Circuit entered in the above-entitled cause dated September 20, 1988 is attached as Appendix A. Copies of the judgment ~~and opinion~~ of the U. S. District Court for the Eastern District of Virginia (Alexandria Division) ~~have been denied me.~~ ARE B.

JURISDICTION

The opinion of the Court of Appeals for the Fourth Circuit was filed on Sepgember 20, 1988. The jurisdiction of this Court is invoked pursuant to 28 U.S.C. §1254(1).

CONSTITUTIONAL PROVISION INVOLVED

The Fourteenth Amendment of the Constitution provides for due process, fair hearing, and equal protection of the

laws in actions in state courts.

STATEMENT OF FACTS

Plaintiff pro se complained against state and federal judges and private defendants that they conspired to deny him a fair hearing and deprive him of due process praying for injunctive relief. The district court dismissed the actions and awarded Rule 11 sanctions, which were vacated on September 20, 1988 by the Fourth Circuit Court of Appeals.

No hearing of facts has been had. There has been no opportunity to present evidence or to further discover the limits of the conspiracy against him.

Plaintiff prays only for injunctive relief as to judicial defendants under 42 U.S.C. §1983.

Plaintiff's allegations were detailed, specific, factual, and in good faith

(see 9/20/88 4CCA).

The harm and threat of further harm continues.

REASONS FOR GRANTING THE WRIT

A. THIS CASE PROVIDES THIS COURT WITH AN OPPORTUNITY TO LIMIT ABSOLUTE JUDICIAL IMMUNITY IN AREAS OF JUDGES SUMMARILY DISMISSING GOOD FAITH ALLEGATIONS AGAINST JUDGES IN THE AREA OF CONSPIRATORAL DENIAL OF FAIR HEARING, DUE PROCESS, AND EQUAL PROTECTION OF THE LAWS.

A recent (January 1988) U. S. Supreme Court case, Cynthia A. Forrester v. Judge Howard L. White, further reduced the bounds of protection afforded wayward judges under "absolute" immunity. It, stating that administrative acts are not protected, included employment decisions in that category.

Now is the time to send a message to would be judicial-cover-up judges that in these areas of good-faith allegations of

judicial denial of fair hearing, due process, and equal protection of the laws against pro se plaintiffs wherein harm is of an irreversible nature, that protection of fair hearing, due process, and equal protection of the laws is to be especially guarded or else it is meaningless in that when one seeks protection of the courts, he faces a "catch 22" situation.

The fact that plaintiff complains on more than one occasion (of the same judges and subject matter and events ongoing) is not to be taken as frivolous but as a continuing effort to be heard (instead of thwarted because of the subject matter) on a matter demonstrated to be genuine by its continuing complaint.

The fact pattern in the allegations clearly demonstrates that the truth of

the allegations could be determined by existing pleadings in the cause(s) complained of as to whether it happened or not, its nature, its seriousness, and its anticipated consequences if not addressed by federal intervention by way of injunction.

Mitchum v. Foster and a lengthy history of causes clearly establish that judges are not immune from prayer for injunctive relief per se.

Plaintiff did not request the trial court that they "review the decisions of state courts." Plaintiff requested the trial court that they inquire into the conduct of the state court wherein no decision had been rendered but conspiracy ensued, on-going, which was about to (and which now has and is continuing to) cause irreversible harm.

Plaintiff has a right to amend if the trial court determines that he failed to state a claim for which he is entitled to relief.

Plaintiff alleged that non-state-actor defendants did conspire with a state official(s).

42 U.S.C. §1983, to be effective in this area of judicial harm, should be expanded into this area, as it should not harm the intent of immunity (to protect judicial independence, to discourage disappointed litigants from attacking judges personally rather than appealing decisions in an orderly way, and to protect in situations where an official's position requires that he be constantly making decisions that disappoint and distress members of the public, BUT NOT TO MAKE LIFE EASY FOR JUDGES) but should put judges on no-

tice that they are to be held accountable for their intentionally wrongful acts by the public directly and not just a Judicial Review Commission or recall. This is even more pertinent for appointed judges with life tenure who exercise absolute and great power.

B. THIS CASE PROVIDES THIS COURT WITH AN OPPORTUNITY TO LIMIT ABSOLUTE JUDICIAL IMMUNITY IN AREAS OF JUDGES SUMMARILY DISMISSING GOOD FAITH ALLEGATIONS AGAINST JUDGES WHEN INJUNCTIVE RELIEF IS REQUESTED TO STOP CONSPIRACY TO HARM PLAINTIFF AS A PRO SE LITIGANT.

Petitioner hereby adopts and incorporates his §A. above. Judges should fear no harm from a prayer for injunctive relief if a prima facie case has been presented that their sitting over a particular pro se defendant reeks of impropriety and the matter can be relieved by their stepping aside from the case as to that pro se defendant and voluntarily recusing them-

selves. The question then becomes the motivation of the pro se defendant for requesting recusal and that should be decided by a good faith hearing by a fair judge on the prima facie facts of conflict or potential for conflict (especially so when those facts are of record).

Judicial power with unbridled absolute immunity is too great for a pro se defendant to deal with in these cases.

CONCLUSION

These matters should not be dismissed summarily in series without consideration for the need for injunctive relief and the possibility that the complaining defendant pro se is in good faith and correct and might even prevail.

Respectfully submitted,

/41

CHARLES M. ANDERSON
8401 Cathedral Forest Dr.
Fairfax Station, VA. 22030
Ph: (703) 643-2562

Petitioner Pro Se

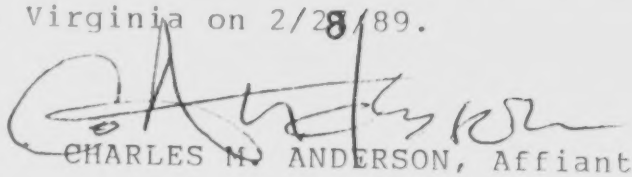
Dated: 1/17/89 (previous 12/18/88)

PROOF OF SERVICE

CHARLES M. ANDERSON, after being duly sworn, disposes and says that pursuant to Rule 28.4(a) of this Court, he served the within Petition for Writ of Certiorari to the Court of Appeals for the Fourth Circuit on counsel for the REspondent by enclosing three copies thereof in an envelope, first class postage prepaid, addressed to:

Peter Messitt, 101 N. 8th St., Richmond
Charles Sickels, 4010 Univ.Dr,Fairfax
A. S. Brent, 10511 Jud'l Dr,Fairfax
Doug Mackall, 4031 Ch. Bridge, Fairfax
Henry Hudson, 704 Prince St, Alexandria
Donald Bowman, 11 W. Mkt St, Leesburg, VA.

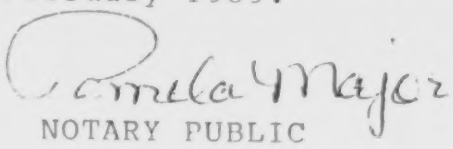
and depositing same in the U.S. mail in Fairfax, Virginia on 2/28/89.



CHARLES M. ANDERSON, Affiant

COMMONWEALTH OF VIRGINIA
COUNTY OF FAIRFAX, to-wit:

Subscribed and sworn to before me this 28th day of February 1989.



NOTARY PUBLIC

My commission expires 26 June 1990.

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 87-2172

CHARLES M. ANDERSON

Plaintiff - Appellant

v.

CHARLES W. SICKELS; THOMAS J. MIDDLETON; BERNARD F. JENNINGS; A. STRODE BRENT, JR.; PARR EXCELLANCE, INC.

Defendants - Appellees

No. 87-2176

CHARLES M. ANDERSON

Plaintiff - Appellant

v.

HENRY C. MACKALL; MACKALL, MACKALL, WALKER & SILVER; DONALD L. BOWMAN, LAW OFFICE; F. BRUCE BACH: JACK B. STEVENS; J. HOWE BROWN; THOMAS A. FORTKORT; CLAUSE HILTON

Defendants - Appellees

A

Appeals from the U. S. District Court for the Eastern District of Virginia, at Alexandria. James C. Cacheris, District Judge. (C/A Nos. 87-0801-A; 87-609-A)

Subjitted: May 27, 1988 Decided: Sept20, 88

Before RUSSELL and SPROUSE, Circuit Judges, and BUTZNER, Senior Circuit Judge.

Charles M. Anderson, Appellant Pro Se. Peer R. Messit (OFFICE OF THE ATTORNEY GENEERAL OF VIRGINIA); A. Strode Brent, Jr.; Charles William Sickels (HALL, MARKLE & SICKELS, PC); Glenn Hugh Silver (MACKALL, MACKALL, WALKER & SILVER); Henry Edward Hudson, U. S. Attorney (OFFICE OF THE U.S. ATTORNEY); Donald L. Bowman, for Appellees.

PER CURIAM:

Charles Andeson filed two actions pursuant to 42 U.S.C.§1983 against six state judges, a federal district judge, and several private defendants alleging that they conspired to deny him a fair hearing and deprive him of due process. The district court dismissed the actions and awarded attorney's fees against Anderson. Anderson appealed.

The federal and state judges are immune from liability in damages. See Stump v. Sparkman, 435 U.S. 349 (1978). Moreover, the lower federal courts are without jurisdiction to review the decisions of state courts. See District of Columbia Court of Appeals v. Feldman, 460 U.S. 462, 486 (1983). See also Ganey v. Barefoot, 749 F.2d 1124, 1127 (4th Cir. 1984), cert. denied, 472 U.S. 1014 (1985). In his claim against the federal judge, Anderson chalenges the dismissal of one of his prior federal actions. As the proper vehicle for Anderson to object to this dismissal is through appeal, which in fact he had done, he has failed to state a claim for which he is entitled relief. The action was also properly dismissed against the remaining defendants as they are not state actors and Anderson has failed to establish that they conspired with a state official. See generally Tower v. Glover, 467 U.S. 914 (1984); Dennis v.

Sparks, 449 U.S. 24, 27-28 (1980).

Rule 11, Fed. R. Civ. P., provides that where an attorney or party signs a pleading he certifies to the court that he has conducted reasonable investigation and to the best of his knowledge the pleadings represent a proper legal claim. See 5 C. Wright, A. Miller & M. Kane, Federal Practice and Procedure, §1332 (1987 Supp.). A violation of this rule is sufficient cause for the district court to impose sanctions. See Cabell v. Petty, 810 F.2d 463 (4th Cir. 1987). Anderson's actions in this case demonstrate that a serious question exists as to his competency as an attorney. We cannot say, however, that the record reflects a violation of rule 11.

In view of the above, we affirm the district court's dismissal of this action but vacate the order imposing sanctions. Because the dispositive issues have been decided authoritatively, we dispense with

oral argument.

AFFIRMED IN PART
VACATED IN PART

IN THE U. S. DISTRICT COURT FOR THE
EASTERN DISTRICT OF VIRGINIA
Alexandria Division

CHARLES M. ANDERSON,	)	
	)	
Plaintiff,	)	C. A. NO.
v.	)	87-609-A
	)	
HENRY C. MACKALL, et al.,	)	
	)	
Defendants.	)	

O R D E R

For reasons stated in open court, it is accordingly

ORDERED:

(1) that the Motions of defendants Bach, Stevens, Brown, Fortkort and Hilton to Dismiss are GRANTED;

(2) that the Motion to Dismiss of defendants Donald L. Bowman and Donald L. Bowman Law Office is GRANTED;

(3) that the Motion to Dismiss of defendants Henry C. Mackall and Mackall, Mackall, Walker & Silver is GRANTED;

(4) that the defendants shall file their motions for counsel fees, costs and sanc-

tions within ten days from the date of entry of this Order, and the plaintiff shall file his opposition within twenty days from the date of entry of this Order;

(5) that the Clerk shall forward copies of this Order to all counsel of record.

August 21, 87
Alexandria, VA.

/s/ James C. Cacheris
U. S. District Judge

IN THE U. S. DISTRICT COURT FOR THE
EASTERN DISTRICT OF VIRGINIA
Alexandria Division

CHARLES M. ANDERSON,	)	
	)	
Plaintiff,	)	C. A. NO.
v.	)	87-801-A
	)	
CHARLES W. SICKELS, et al.	)	
	)	
Defendants.	)	

O R D E R

For reasons stated in open cout, it is accordingly

ORDERED:

(1) that the Motion to Adopt and Conform filed by the defendant A. Strode Brent, Jr. is GRANTED;

(2) taht the Motion to Dismiss is GRANTED as to defendants Brent, Sickels, and Parr Excellence, Inc.,;

(3) that the Motion to Dismiss filed by defendants Thomas J. Middleton and Barnard F. Jennings is GRANTED;

(4) that defendants have ten days from the date of this Order to file their re-

quests for attorney's fees, and plaintiff has twenty days from the date of this Order to file his response;

(5) that the Clerk shall forward copies of this Order to plaintiff pro se and to all counsel of record.

August 21, 87
Alexandria, VA.

/s/ James C. Cacheris
U. S. District Judge